



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Mr. Randy R. Casey, Director  
Division of Mined Land Reclamation  
Commonwealth of Virginia  
Department of Mines, Minerals and Energy  
P.O. Drawer 900  
Big Stone Gap, Virginia 24219

JAN 28 2016

Re: NPDES Permit No. VA0081401  
Red River Coal Company, Inc. – North Fox Gap Surface Mine  
South Fork Pound Watershed, Wise County, VA  
EPA Receipt Date: October 30, 2015

Dear Mr. Casey:

On November 25, 2015 we sent you, pursuant to 40 C.F.R. § 123.44(b)(1) and the Memoranda of Agreement (MOA) addressing implementation of the National Pollutant Discharge Elimination System (NPDES) program in Virginia, a general objection letter to the above-referenced draft permit. The November 25, 2015 general objection letter served as a time extension request for the full 90-day period to review the draft permit. Because, based on our understanding of the information provided and for the reasons described below, this draft permit does not satisfy the Clean Water Act (CWA), 40 C.F.R. §122, and the applicable Virginia Water Quality Standards, this letter serves as the U. S. Environmental Protection Agency Region III's (EPA) specific objection to the draft permit and identifies issues which must be resolved before the permit can be issued. EPA's objection is based on the fact that the permit does not contain sufficient conditions to ensure compliance with water quality standards and does not contain effluent limitations consistent with the assumptions and requirements of wasteload allocations established through the South Fork Pound River Total Maximum Daily Load (TMDL).  
40 C.F.R. § 122.44(d) (1) (vii) (B)

The Red River Coal Company, Inc. – North Fox Gap Surface Mine is an existing 694.12 acres surface mine facility discharging to the Rat Creek, a tributary to the South Fork Pound River, and to the South Fork Pound River Watershed. There are four outfalls associated with this draft permit. The South Fork Pound River watershed has been identified as having an impaired benthic community.

A TMDL was developed for the South Fork Pound River by Virginia and approved by EPA on April 28, 2011 pursuant to Section 303(d) of the CWA and 40 C.F.R. § 130.7. That TMDL identified Total Suspended Solids (TSS) and Total Dissolved Solids (TDS) as most probable stressors and assigned wasteload allocations to point sources and load allocations to non-point sources in the South Fork Pound River watershed for these parameters. The TMDL also identified instream concentrations of TSS and TDS that will support Virginia's narrative water quality standards, based on a reference stream approach.

The North Fox Gap Surface Mine was identified in the approved TMDL. The TMDL assigned an individual TDS wasteload allocation (WLA) for this facility equal to 558,431 kg/year. On your October 30, 2015 draft NPDES permit transmittal email you indicated that the four outfalls from this facility have been relocated and in the new locations rarely discharge. While the fact sheet specifies zero TDS loading contribution from the facility to the South Fork Pound River watershed it is our understanding that there remain discharges from the original outfall locations to the South Fork Pound River watershed and those discharges continue to contribute TDS to the watershed.

The CWA requires that all point source discharges, including those in post-mining areas and post-bond release discharges, must have an NPDES permit. In connection with development of effluent limitation guidelines for the Coal Mining Point Source Category (40 C.F.R. Part 434), EPA stated:

[T]he Agency wishes to re-emphasize that post-bond release discharges are subject to regulation under the CWA. If a point source discharge occurs after bond release, then it must be regulated through an NPDES permit under sections 301(a) and 402 of the CWA. If the responsible party does not obtain a permit, then it is subject to enforcement action by EPA under section 309 of the CWA.

50 Fed. Reg. 41296, 41298 (Oct. 9, 1985).

In addition, in response to a comment suggesting that post-bond release discharges should not be required to have an NPDES permit if influent to the pond meets background water quality, EPA stated:

All point source dischargers are required by law to have an NPDES permit. Limits set forth in an NPDES permit in the absence of effluent limitations guidelines must still be based on Best Available Technology Economically Achievable (or, for conventional pollutants, best conventional control technology (BCT)), plus any limitations needed to meet state water quality standards. In the absence of nationally applicable effluent limitations guidelines and standards, these limitations are set according to the permit authority's Best Professional Judgment (BPJ)). There are no exceptions in the CWA from these requirements based on the quality of the influent.

*Id.* at 41304.

It is our understanding that this facility continues discharging TDS from the original outfall locations. As set forth above, that ongoing discharge from the original outfall locations needs a permit, regardless of whether the discharges are deemed to be associated with active mining activity.<sup>1</sup> The draft permit already requires TSS limits, sampling, and reporting during

<sup>1</sup> EPA expresses no opinion as to whether the ongoing discharges from the original outfall locations are or are not associated with active mining activity. Regardless of whether or not there is active mining activity, additions of pollutant from point sources require an NPDES permit.



storm water events to assess compliance with the TMDL requirements for this parameter. Accordingly, TDS water quality-based effluent limits (WQBELs) should be included in the permit consistent with the assumptions and requirements of the South Fork Pound River WLA assigned for this facility. 40 C.F.R. § 122.44(d) (1) (vii) (B). It also should be noted that EPA's regulations define TMDLs as "[t]he sum of the individual WLAs [wasteload allocations] for point sources and LAs [load allocations] for nonpoint sources and natural background. 40 C.F.R. § 130.2(i). This facility has an individual WLA for TSS and TDS. There continues to be an addition of TSS and TDS from the outfall locations to the watershed. Since the addition to the watershed of TSS and TDS from the outfall locations is not zero, the WLAs for TSS and TDS assigned to those outfalls cannot be reassigned to a new or different outfall.

If EPA were to issue the permit, EPA would revise the permit to include the following conditions:

- TDS WQBELs consistent with the assumptions and requirements of the WLA assigned to this facility consistent with 40 C.F.R. § 122.44(d) (1) (vii) (B) at the original outfall locations.
- Regulate the discharges from the original outfalls under the NPDES permit.
- Require effluent characterization of the original outfall locations consistent with the requirements 40 C.F.R. § 122.21(g).

While the foregoing describes the conditions that EPA would include if the EPA were to issue this permit, we believe that the CWA and the EPA's regulations provide flexibility in responding to the issues we have identified and we look forward to continuing our constructive discussions with you to identify permit conditions consistent with the state and Federal regulations.

Please be advised that this evaluation is independent of any review conducted pursuant Section 404 of the CWA. The considerations embodied in Sections 402 (NPDES) and 404 of the CWA are different, and the two provisions impose different requirements. Accordingly, nothing in our review of the draft NPDES permit should be construed as a finding that this project does or does not satisfy the Section 404(b)(1) Guidelines.

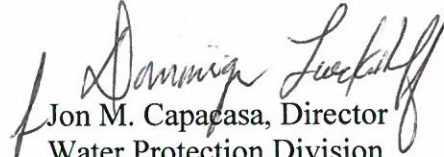
Pursuant to Section 402(d) of the CWA and the EPA's regulations at 40 CFR §§ 122.4(c) and 123.44, a final NPDES permit shall not be issued unless and until the EPA's objections have been resolved. Please be aware that EPA regulations call for your response on or before 90 days from your receipt of this letter. If you believe EPA's understanding of the discharges is incorrect, we would appreciate your contacting us as soon as possible to allow time for consideration of any information you may provide.





We look forward to working with you to resolve the issues we identify in this letter. If you have any questions, please do not hesitate to contact me or your staff may call Mr. Brian Trulear (215) 814-5723.

Sincerely,

  
Jon M. Capacasa, Director  
Water Protection Division

cc: James M. Thomas, Red River Coal Company, Inc.

